IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

MONDAY, THE 9TH JULY 2007 / 18TH ASHADHA 1929

WP(C).No. 30212 of 2005(V)

EA.78/05 IN EP.128/04 IN OS.721/2001 of MUNSIFF-MAGISTRATE, SULTHAN BATHERI

.....

PETITIONER:

NADUPARAMBIL SUKUMARAN,
S/O.KUNHAPPAN, RESIDING AT NIRMALYAM HOUSE,
PONGINICHIKKALLUR AMSOM AND DESOM OF
VYTHIRI TALUK.

BY ADV. SRI.V.RAJAGOPAL

RESPONDENTS:

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1. K.P.GOPALAN, KOTTOOR VEEDU,
IRULAM AMSOM AND DESOM, SULTHAN BATHERY TALUK.

2. PRAKASHAN, S/O.JANARDHANAN,
VEYILUKANAPARAYIL, IRULAM AMSOM AND DESOM,
SULTHAN BATHERY TALUK.

R1 BY ADV. SRI.M.P.ASHOK KUMAR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 09/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC.30212/05

APPENDIX

PETITIONER'S EXTS:

EXT.P1 – TRUE COPY OF AFFIDAVIT AND PETITION FILED BY PETR. IN E.A.78/05 BEFORE MUNSIFF-MAGISTRATE, SULTHAN BATHERY.

EXT.P2 – TRUE COPY OF CLAIM PETITION FILED BY PETR. IN EP.128/04 BEFORE MUNSIFF, SULTHAN BATHERY.

EXT.P3 – TRUE COPY OF SALE AGREEMENT EXECUTED BY R2 AND OTHERS DT.25.6.01.

EXT.P4 – TRUE COPY OF ORDER IN E.A.78/05 IN EP.128/04 DT.17.10.05 BEFORE MUNSIFF-MAGISTRATE, SULTHAN BATHERY.

/TRUE COPY/

PIUS C. KURIAKOSE, J.

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W.P.(C)No.30212 OF 2005

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DATED THIS THE 9th JULY, 2007

J U D G M E N T

Impugned in this Writ Petition which is initiated by the claimant before the execution court is Ext.P4 order passed by the learned Munsiff-Magistrate dismissing an application for issuance of a commission for identifying the property in question. The petitioner claims the decree-schedule property on the basis of an agreement for sale taken by him after the order of attachment before judgment was passed by the trial court. The commission application (Ext.P1) was filed by him contending that the subject-property involved in the execution petition (which is scheduled to the decree since the suit was for specific performance of a contract also, though ultimately the same was decreed only for money) is under his exclusive possession and enjoyment. The prayer in Ext.P1 was that a commissioner be deputed to inspect the property involved in the decree, i.e., the decree-schedule property, and for submission of a report and sketch.

2. The learned Munsiff-Magistrate dismissed the application mainly on the reason that the petitioner does not pray that commissioner be deputed to identify the property in respect of which

he has lodged the claim, i.e., the property covered by the claim petition and the agreement relied on by him. I cannot say that the view taken by the learned Munsiff-Magistrate is vitiated to the extent of warranting interference in the supervisory jurisdiction of this Court under Article 227. I approve Ext.P4 and decline relief to the petitioner. Nevertheless, there will be an observation that confirmation of Ext.P4 by this Court will not stand in the way of the petitioner filing a fresh application seeking identification of the claim petition-scheduled property, which Mr.V.Rajagopal asserts before me is the same as the decree-schedule property, and the court passing appropriate orders on that application. But having regard to the submissions addressed before me by the learned counsel for the 1st respondent regarding the maintainability of the claim petition, there will be a direction to the learned Munsiff-Magistrate to hear the parties initially on the question whether the claim petition is maintainable or as to whether the same is liable to be rejected even before orders are passed on the prospective commission application to be filed by the petitioner. Mr.Rajagopal, counsel for the petitioner submits that he is instructed to inform the court that the claim petition has since been closed by the execution court. It is open to the petitioner to file

appropriate application before the learned Munsiff-Magistrate seeking revival of the claim petition, if the same stands closed, on the strength of this judgment.

The Writ Petition is disposed of as above. No costs.

(PIUS C.KURIAKOSE, JUDGE)

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